

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DARRICK SMITH, on behalf of himself
and all other persons similarly
situated known or unknown,

Plaintiffs,
v.
Case No. 12-CV-11462
HAPPY'S PIZZA FRANCHISE, LLC, et al.,
Defendants.

ORDER GRANTING RULE 56(D) MOTION (#11, 100), GRANTING PLAINTIFFS'
MOTION FOR LEAVE TO SUBMIT SUPPLEMENTAL AUTHORITY (#108),
AND ADJOURNING MOTION FOR SUMMARY JUDGMENT (#9, 19)

This case is a collective action in which plaintiffs allege defendants violated the Fair Labor Standards Act, 29 U.S.C. §201 *et seq.*, by failing to pay overtime wages. Three motions are before the court: (1) defendants Happy's Pizza Franchise, LLC and Happy Asker's motion for summary judgment; (2) plaintiffs' Rule 56(d) motion; and (3) plaintiffs' motion for leave to submit supplemental authority. In the motion for summary judgment, defendants argue they are not employers of plaintiffs under the FLSA. In the Rule 56(d) motion, plaintiffs argue they need to conduct discovery in order to respond to the arguments in the summary judgment motion. In the motion for leave to submit supplemental authority, plaintiffs seek to submit an order in a related case from Judge Bell in the Western District of Michigan, issued yesterday. The court held oral argument on the motions on January 17, 2013. For the reasons set forth on the record, the court grants plaintiffs' Rule 56(d) motion. The deadline for completing discovery relating to the issue

of whether Happy's Pizza Franchise, LLC and Happy Asker are employers under the FLSA is April 12, 2013. The motion for summary judgment is adjourned. After discovery, if plaintiffs still intend to pursue claims against Happy's Pizza Franchise, LLC and Happy Asker on the basis of employer liability under the FLSA, the parties shall file supplemental briefs on the issues presented in the summary judgment motion by April 22, 2013. The court will then set a hearing date. The motion seeking leave to submit supplemental authority is granted.

SO ORDERED.

Dated: January 18, 2013

s/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record and on Joseph N. Newbold, Freeborn & Peters, LLP, 311 South Wacker Drive, Suite 3000, Chicago, IL 60606 and Maureen Ann Salas, Werman Law Offices, PC, 77 W. Washington, Suite 1402, Chicago, IL 60602 on January 18, 2013, by electronic and/or ordinary mail.

s/Barbara Radke
Deputy Clerk